

contends that after the weekend he did not have any pain in his back. After work, on the date of his accident, claimant drove home and had to wait in his car for his girlfriend to arrive to help him out of his car because of his back injury.

The following day, July 12, 1994, claimant sought medical treatment on his own with Joan Moore, M.D., in Louisburg, Kansas. She diagnosed a herniated disc and noted in the medical record that patient's low back problem started four (4) days before with pain down the left leg. She also noted that claimant was in great pain, could hardly walk and could not sit down. Dr. Moore prescribed pain medication and ordered a CT scan. The claimant canceled the CT scan and also did not return to see Dr. Moore. Claimant immediately commenced chiropractic treatments with a chiropractor that was near his home. Claimant testified that he could not walk or get into a car but could get to the chiropractor's office which was approximately one-hundred fifty (150) feet from his home. He saw the chiropractor, Dr. Damon Dennis, on July 14, 1994, relating to him that he had hurt his back at work. Dr. Dennis treated him on a regular basis from July 14, 1994 until September 14, 1994. Dr. Dennis returned the claimant to full-duty work on August 22, 1994.

At the Preliminary Hearing, claimant testified that his back remained sore and he had numbness down his leg. At that time, claimant requested that the Administrative Law Judge order him to be evaluated and treated by a medical specialist.

In its brief, respondent argues that claimant has failed to meet his burden of proof that he sustained a low back injury at work on July 11, 1994. Respondent contends that claimant hurt his back getting out of a car prior to July 11, 1994. Additionally, respondent argues that claimant claims an injury date of July 11, 1994, but gave a history to Dr. Moore on July 12, 1994 that he hurt his back four (4) days before. It is respondent's position that because the claimant has failed to keep his stories straight, benefits should be denied.

After a review of claimant's testimony and the medical records admitted for preliminary hearing purposes, the Appeals Board affirms the Preliminary Hearing Order of Administrative Law Judge Alvin E. Witwer that found claimant had injured his low back while bending rebar for the respondent on July 11, 1994. Claimant specifically described how his back was injured and the medical records verify a low back injury that required treatment.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Alvin E. Witwer, dated May 1, 1995, should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of July 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Robert W. Harris, Kansas City, KS
John David Jurcyk, Lenexa, KS
Alvin E. Witwer, Administrative Law Judge
David A. Shufelt, Acting Director